

McCARTER & ENGLISH, LLP  
 100 Mulberry Street  
 Four Gateway Center  
 Newark, New Jersey 17102  
 Attorney for Defendants  
 Physicians Health Services, Inc. and  
 Physicians Health Services of New  
 Jersey, Inc.  
 KG - 1349

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SEP 25 2001  
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 CLERK

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF NEW JERSEY

Docket No. 2:01-cv-4183 (FSH)

ZEV WACHTEL and LINDA WACHTEL,  
 individually and on behalf of their minor son,  
 TORY WACHTEL,

Plaintiffs,

v.

GUARDIAN LIFE INSURANCE CO. OF  
 AMERICA, PHYSICIANS HEALTH SERVICES,  
 INC., and PHYSICIANS HEALTH SERVICES  
 OF NEW JERSEY, INC.

Defendants.

**NOTICE OF MOTION TO  
 DISMISS THE COMPLAINT**

**TO:** Barry M. Epstein, Esq.  
 Sills Cummis Radin Tischman  
 Epstein & Gross, PA  
 One Riverfront Plaza  
 Newark, New Jersey 07102  
 Attorneys for Plaintiffs

Peter J. Heck, Esq.  
 Del Mauro, DiGiaimo & Knepper, P.C.  
 8 Headquarters Plaza, North Tower  
 Morristown, New Jersey 07960  
 Attorneys for Defendant  
 Guardian Life Insurance Company of America

**COUNSEL:**

**PLEASE TAKE NOTICE** that on October 22, 2001, at 10 o'clock in the forenoon, or as soon thereafter as counsel may be heard, the undersigned attorneys for defendants Physicians Health Services, Inc. and Physicians Health Services of New Jersey, Inc. (collectively "PHS") shall apply to the United States District Court for the District of New Jersey, at the United States Post Office & Courthouse Building, Federal Square, Newark, New Jersey 07101, before the Honorable Faith S. Hochberg, U.S.D.J., for an Order dismissing the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6);

**PLEASE TAKE FURTHER NOTICE** that we shall rely on the Brief submitted herewith;

**PLEASE TAKE FURTHER NOTICE** that we respectfully request oral argument.

McCARTER & ENGLISH, LLP  
Attorneys for Defendants  
Physicians Health Services, Inc. and  
Physicians Health Services of New  
Jersey, Inc.

By:

  
Katie A. Gummer  
A Member of the Firm

DATED: September 25, 2001

McCARTER & ENGLISH, LLP  
100 Mulberry Street  
Four Gateway Center  
Newark, New Jersey 17102  
Attorney for Defendants  
Physicians Health Services, Inc. and  
Physicians Health Services of New  
Jersey, Inc.  
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AMERICA, PHYSICIANS HEALTH SERVICES,  
INC., and PHYSICIANS HEALTH SERVICES  
OF NEW JERSEY, INC.

Defendants.

**CERTIFICATION  
OF SERVICE**

ANTHONY F. YACULLO, of full age, hereby certifies as follows:

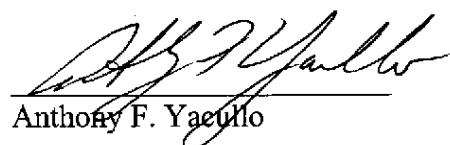
1. I am an attorney-at-law of the State of New Jersey and am an associate of the firm of McCarter & English, LLP, attorneys for defendants Physicians Health Services, Inc. and Physicians Health Services of New Jersey, Inc. (collectively "PHS") in this case. I am fully familiar with the facts set forth herein.

2. On September 25, 2001, I caused a true and correct copy of PHS's Notice of Motion to Dismiss, Brief in Support of the Motion to Dismiss, and a Proposed Order, to be served by facsimile and certified mail to:

Barry M. Epstein, Esq.  
Sills Cummis Radin Tischman  
Epstein & Gross, PA  
One Riverfront Plaza  
Newark, New Jersey 07102  
Attorneys for Plaintiffs

Peter J. Heck, Esq.  
Del Mauro, DiGiaimo & Knepper, P.C.  
8 Headquarters Plaza, North Tower  
Morristown, New Jersey 07960  
Attorneys for Defendant  
Guardian Life Insurance Company of America

I certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



\_\_\_\_\_  
Anthony F. Yacullo

Dated: September 25, 2001